

PRISONER'S CIVIL RIGHTS COMPLAINT (Rev. 05/2015)

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION

**FILED**  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
OCT 07 2016  
BY  
DEPUTY

BOBBY PEREZ-1117750

Plaintiff's Name and ID Number

POLUNSKY UNIT, 3872 FM 350 SOUTH,  
LIVINGSTON, TX. 77351

Place of Confinement

CASE NO. \_\_\_\_\_  
(Clerk will assign the number)

V.

TEXAS DEPARTMENT OF CRIMINAL JUSTICE,  
P.O. BOX 99, HUNTSVILLE, TX. 77342-0099

9:16cv166 RC/KFG

Defendant's Name and Address

BRAD LIVINGSTON, EXECUTIVE DIRECTOR,  
P.O. BOX 99, HUNTSVILLE, TX. 77342-0099

Defendant's Name and Address

KEVIN MOORE, SENIOR PRACTICE MANAGER,  
1202 FM 350 SOUTH, LIVINGSTON, TX. 77351

Defendant's Name and Address

(DO NOT USE "ET AL.")

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**INSTRUCTIONS - READ CAREFULLY**

**NOTICE:**

**Your complaint is subject to dismissal unless it conforms to these instructions and this form.**

1. To start an action you must file an original and once copy of your complaint with the court. You should keep a copy of the complaint for your own records.
2. Your complaint must be legibly handwritten, in ink, or typewritten. You, the plaintiff, must sign and declare under penalty of perjury that the facts are correct. If you need additional space, **DO NOT USE THE REVERSE SIDE OR BACKSIDE OF ANY PAGE.** ATTACH AN ADDITIONAL BLANK PAGE AND WRITE ON IT.
3. You must file a separate complaint for each claim you have unless the various claims are all related to the same incident or issue or are all against the same defendant, Rule 8, Federal Rules of Civil Procedure Make a short and plain statement of your claim, Rule 8, Federal Rules of Civil Procedure.
4. When these forms are completed, mail the original and once copy to the clerk of the United States district court for the appropriate district of Texas in the division where one or more named defendants are located, or where the incident giving rise to your claim for relief occurred. If you are confined in the Texas Department of Criminal Justice, Correctional Institutions Division (TDCJ-CID), the list labeled as "VENUE LIST" is posted in your unit law library. It is a list of the Texas prison units indicating the appropriate district court, the division and an address list of the divisional clerks.

JANE DOE, STEP II MED. GRIEV. PROGRAM,  
P.O. BOX 99, HUNTSVILLE, TX. 77342-0099

Defendant's Name and Address

DR.JESSICA KHAN, M.D., DIRECTOR OF VIROLOGY,  
1202 FM 350 SOUTH, LIVINGSTON, TX. 77351

Defendant's Name and Address

**FILING FEE AND IN FORMA PAUPERIS (IFP)**

1. In order for your complaint to be filed, it must be accompanied by the statutory filing fee of \$350.00 plus an administrative fee of \$50.00 for a total fee of \$400.00
2. If you do not have the necessary funds to pay the fee in full at this time, you may request permission to proceed *in forma pauperis*. In this even you must complete the application to proceed *in forma pauperis*, setting forth information to establish you inability to prepay the fees and costs or give security therefor. You must also include a current six-month history of you inmate trust account. If you are an inmate in TDCJ-CID, you can acquire the application to proceed *in forma pauperis* and the certificate of inmate trust account, also known as *in forma pauperis* data sheet, from the law library at you prison unit.
3. The Prison Litigation Reform Act of 1995 (PLRA) provides "... if a prisoner brings a civil action or files an appeal *in forma pauperis*, the prisoner shall be required to pay the full amount of a filing fee." See 28 U.S.C. § 1915. Thus, the court is required to assess and, when funds exist, collect, the entire filing fee or a initial partial filing fee and monthly installments until the entire amount of the filing fee has been paid by the prisoner. If you submit the application to proceed *in forma pauperis*, the court will apply 28 U.S.C. § 1915 and, if appropriate, assess and collect the entire filing fee or an initial partial filing fee, then monthly installments from you inmate trust account, until the entire \$350.00 statutory filing fee has been paid. (The \$50.00 administrative fee does not apply to cases proceeding *in forma pauperis*.)
4. If you intend to seek *in forma pauperis* status, do not send you complaint without an application to proceed *in forma pauperis* and the certificate of inmate trust account. Complete all essential paperwork before submitting it to the court.

**CHANGE OF ADDRESS**

It is your responsibility to inform the court of any change of address and its effective date. Such notice should be marked "**NOTICE TO THE COURT OF CHANGE OF ADDRESS**" and shall not include any motion for any other relief. Failure to file a NOTICE OF THE COURT OF CHANGE OF ADDRESS may result in the dismissal of your complaint pursuant to Rule 41(b), Federal Rules of Civil Procedure.

**I. PREVIOUS LAWSUITS:**

- A. Have you filed *any* other lawsuit in state or federal court relating to your imprisonment?  X  YES   NO
- B. If your answer to "A" is "yes", describe each lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, giving the same information.)
  1. Approximate date of filing lawsuit:  AUGUST 28, 2013
  2. Parties to previous lawsuit:
 

Plaintiff(s)  BOBBY PEREZ-1117750

Defendant(s)  RANDY BROWN, JAN QUINTANA, DELIA CASTRO
  3. Court: (If federal, name the district; if state, name the county.)  WESTERN DISTRICT OF TEXAS
  4. Cause number:  5:13-cv-00810
  5. Name of judge to whom case was assigned:  ORLANDO L. GARCIA
  6. Disposition: (Was the case dismissed, appealed, still pending?)  DISMISSED
  7. Approximate date of disposition:  NOVEMBER 27, 2013

- II. PLACE OF PRESENT CONFINEMENT: POLUNSKY UNIT, 3872 FM 350 SOUTH, LIVINGSTON,  
TX. 77351
- III. EXHAUSTION OF GRIEVANCE PROCEDURES:  
Have you exhausted all steps of the institutional grievance procedure? X YES    NO  
Attach a copy of your final step of the grievance procedure with the response supplied by the institution.
- IV. PARTIES TO THIS SUIT:
- A. Name and address of plaintiff: BOBBY PEREZ-1117750  
POLUNSKY UNIT, 3872 FM 350 SOUTH, LIVINGSTON, TX. 77351
- B. Full name of each defendant, his official position, his place of employment, and his full mailing address.
- Defendant #1: TEXAS DEPARTMENT OF CRIMINAL JUSTICE (TDCJ)  
P.O. BOX 99, HUNTSVILLE, TX. 77342-0099  
Briefly describe the act(s) or omission(s) of this defendant which you claimed harmed you.  
Creation and implementation of policies demonstrate deliberate indifference to a serious medical need.
- Defendant #2: BRAD LIVINGSTON, EXECUTIVE DIRECTOR, (TDCJ),  
P.O. BOX 99, HUNTSVILLE, TX. 77342-0099  
Briefly describe the acts(s) or omission(s) of this defendant which you claimed harmed you.  
Was responsible for policy, administration, and supervision of staff which delayed, denied, and interfered w/ timely HCV treatment.
- Defendant #3: KEVIN MOORE, SENIOR PRACTICE MANAGER, UTMB/TDCJ,  
1202 FM 350 SOUTH, LIVINGSTON, TX. 77351  
Briefly describe the acts(s) or omission(s) of this defendant which you claimed harmed you.  
Willfully delayed, denied, and interfered w/ the HCV treatment which demonstrate deliberate indifference to a serious medical need.
- Defendant #4: JANE DOE, STEP II MED. GRIEV. PROGRAM, HEALTH SERVICE DIVISION,  
UTMB/TDCJ, P.O. BOX 99, HUNTSVILLE, TX. 77342-0099  
Briefly describe the act(s) or omission(s) of this defendant which you claimed harmed you.  
Willfully delayed, denied, and interfered w/ the HCV treatment which demonstrate deliberate indifference to a serious medical need.
- Defendant #5: DR.JESSICA KHAN, M.D., DIRECTOR OF VIROLOGY, UTMB/TDCJ,  
1202 FM 350 SOUTH, LIVINGSTON, TX. 77351  
Briefly describe the act(s) or omission(s) of this defendant which you claimed harmed you.  
Willfully delayed, denied, and interfered w/ the HCV treatment which demonstrate deliberate indifference to a serious medical need.



Texas Department of Criminal Justice  
**STEP 2** **OFFENDER**  
**GRIEVANCE FORM**

Offender Name: BOBBY PEREZ TDCJ # 1117750  
 Unit: POLUNSKY ☒ Housing Assignment: 12EB-15  
 Unit where incident occurred: POLUNSKY UNIT

## OFFICE USE ONLY

Grievance #: 2016087782  
 UGI Recd Date: MAR 22 2016  
 HQ Recd Date: MAR 28 2016  
 Date Due: 5.2  
 Grievance Code: 624  
 Investigator ID#: \_\_\_\_\_  
 Extension Date: \_\_\_\_\_

*You must attach the completed Step 1 Grievance that has been signed by the Warden for your Step 2 appeal to be accepted. You may not appeal to Step 2 with a Step 1 that has been returned unprocessed.*

**Give reason for appeal (Be Specific).** *I am dissatisfied with the response at Step 1 because...*

The response is flawed. I appeal for the following reasons:

- 1.) Med. Rec. indicate Liver suffering from it's own type of ~~MYXXXXXXXXXX~~ High blood pressure Complication known as PORTAL HYPERTENSION; due to extensive scarring of the Liver.
- 2.) Med. Rec. indicate ASCITES has developed. This complication is due to PORTAL HYPERTENSION or possible KIDNEY DISORDERS, which will lead to Life-threatening Complication.
- 3.) Med., Rec. indicate TYROID DISFUNCTION. This Complication is associated with PRIMARY BILIARY CIRRHOSIS.
- 4.) Med. Rec. indicates complaints of PRURITUS. This complication is also associated with PRIMARY BILIARY CIRRHOSIS.
- 5.) Due to the complication's mentioned and because theres no medical reason for refusing the care i believe consideration should be granted, since the NEW HCV Treatment Protocol IS available. Please understand that once a person has developed one of these complications of cirrhosis, such as ASCITES (which is known as Decompensated cirrhosis), w/out appropriate treatment he has a 50% chance of dying w/in the next five (5) years.
- 6.) "If/When" may be too late. My condition's deem appropriate to initiate ~~medication~~ <sup>medication</sup> treatment. Delaying the appropriate treatment will only put me at risk of more serious complications and possibly even fatal! To say that Treatment Protocol is being followed is irrational!!

At this time i am requesting a de novo review of my step 1 appeal (Case No.: 2016087782). I do believe that i am entitled to the New HCV Treatment protocol. Failure to do so would be deliberate indifference to a serious medical need.

**I NEED to be "CURED", PLEASE.**

Offender Signature: 

Date: 3/21/2016

Grievance Response:

In your Step 1 medical grievance you stated you are being denied treatment for hepatitis C by the persons you named. You are requesting the new breakthrough medication.

The documentation reviewed in your medical record supports the response received at Step 1. Records reflect you are being monitored for hepatitis C and your next Chronic Care Clinic appointment is scheduled for May 2016. You may wish to submit a Sick Call Request to the medical department for your medical issues.

→ While you maintain the right to refuse any treatment, medication or appointment offered, you do not have the right to dictate what treatment, medication or appointment will be prescribed. You are encouraged to work with the unit providers to ensure the best possible treatment for your health care needs. You may wish to review Correctional Managed Health Care Policy B-14.13.3 in the Infection Control Manual at the unit law library. 2.01

**STEP II MEDICAL GRIEVANCE PROGRAM  
OFFICE OF PROFESSIONAL STANDARDS  
TDCJ HEALTH SERVICES DIVISION**

Signature Authority: \_\_\_\_\_

Date: 4-13-16

Returned because: \*Resubmit this form when corrections are made.

- ☐ 1. Grievable time period has expired.
- ☐ 2. Illegible/Incomprehensible.\*
- ☐ 3. Originals not submitted. \*
- ☐ 4. Inappropriate/Excessive attachments.\*
- ☐ 5. Malicious use of vulgar, indecent, or physically threatening language.
- ☐ 6. Inappropriate.\*

CGO Staff Signature: \_\_\_\_\_

**OFFICE USE ONLY****Initial Submission**

CGO Initials: \_\_\_\_\_

Date UGI Recd: \_\_\_\_\_

Date CGO Recd: \_\_\_\_\_

(check one) ☐ Screened ☐ Improperly Submitted

Comments: \_\_\_\_\_

Date Returned to Offender: \_\_\_\_\_

**2<sup>nd</sup> Submission**

CGO Initials: \_\_\_\_\_

Date UGI Recd: \_\_\_\_\_

Date CGO Recd: \_\_\_\_\_

(check one) ☐ Screened ☐ Improperly Submitted

Comments: \_\_\_\_\_

Date Returned to Offender: \_\_\_\_\_

**3<sup>rd</sup> Submission**

CGO Initials: \_\_\_\_\_

Date UGI Recd: \_\_\_\_\_

Date CGO Recd: \_\_\_\_\_

(check one) ☐ Screened ☐ Improperly Submitted

Comments: \_\_\_\_\_

Date Returned to Offender: \_\_\_\_\_

IV. PARTIES TO THIS SUIT:

B. Full name of each defendant, his official position, his place of employment, and his full mailing address.

Defendant #6: UNIVERSITY OF TEXAS MEDICAL BRANCH, CONTRCT W/ TDCJ,  
301 UNIVERSITY BLVD., GALVESTON, TX. 77555.

Briefly describe the act(s) or omission(s) of this defendant which you claim harmed you.

Creation and implementation of policies, pursuant to contract w/ TDCJ,  
delay and interfer w/ HCV treatment demonstrate deliberate indifference.

## V. STATEMENT OF CLAIM:

State here in a short and plain statement the facts of your case that is, what happened, where did it happen, when did it happen, and who was involved. Describe how each defendant is involved. You need not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach extra pages if necessary, but remember the complaint must be stated briefly and concisely. IF YOU VIOLATE THIS RULE, THE COURT MAY STRIKE YOUR COMPLAINT.

Plaintiff was advised in 2013 that he was HCV positive; since he has been asking for treatment, from UTMB & TDCJ, since he is incarcerated. Both, TDCJ and UTMB maintain a policy (No: B-14.13.3) that interfere w/ adequate medical care amount to deliberate indifference. Brad Livingston signed and dated such policy for approval. Dr. Jessica Khan was my treating physician from <sup>5/20/</sup>~~11/17/~~2015 thru 11/17/2015 would refuse to give treatment when asked, plaintiff's conditions worsen under her care. Kevin Moore was asked numerous times for treatment, but would delay and not give definite response. He mentioned following treatment protocol (AASLD/IDSA) on grievance response. Jane Doe, was aware of plaintiff HCV issues and complication's and still refused to offer treatment, stating:

## VI. RELIEF:

State briefly exactly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.

Treatment with the current standard of care, one pill per day, non-Interferon DAA medication/drug 12 week Hepatitis C treatment that cures HCV 95% rate.

## VII. GENERAL BACKGROUND INFORMATION:

A. State, in complete form, all names you have ever used or been known by including any and all aliases.  
BOBBY PEREZ

B. List all TDCJ-CID identification numbers you have ever been assigned and all other state or federal prison or FBI numbers ever assigned to you.

1117750 and 715232.

## VIII. SANCTIONS:

A. Have you been sanctioned by any court as a result of any lawsuit you have filed? \_\_\_\_ YES ☒ NO

B. If your answer is "yes," give the following information for every lawsuit in which sanctions were imposed. (If more than one, use another piece of paper and answer the same questions.)

1. Court that imposed sanctions (if federal, give the district and division): N/A

2. Case number: N/A

3. Approximate date sanctions were imposed: N/A

4. Have the sanctions been lifted or otherwise satisfied? N/A \_\_\_\_ YES \_\_\_\_ NO

V. STATEMENT OF CLAIM:

Cont.

<sup>YOU</sup>  
"you don't have the right to dictate what treatment, medication or appointment offered." Both TDCJ and UTMB policy (No. B-14.13.3) is designed to ration medication to a limited number of inmates, for administrative convenience or money, w/out regard of plaintiff individual need, his disabling case of HCV.

C. Has any court ever warned or notified you that sanctions could be imposed? \_\_\_\_\_ YES X NO

D. If your answer is "yes," give the following information for every lawsuit in which a warning was issued. (If more than one, use another piece of paper and answer the same questions.)

1. Court that issued warning (if federal, give the district and division): \_\_\_\_\_ N/A

2. Case number: \_\_\_\_\_ N/A

3. Approximate date warning was issued: \_\_\_\_\_ N/A

Executed on: October 03, 2016  
DATE



BOBBY PEREZ

(Signature of Plaintiff)

### PLAINTIFF'S DECLARATIONS

1. I declare under penalty of perjury all facts presented in this complaint and attachments hereto are true and correct/
2. I understand, if I am released or transferred, it is my responsibility to keep the court informed of my current mailing address and failure to do so may result in the dismissal of this lawsuit.
3. I understand I must exhaust all available administrative remedies prior to filing this lawsuit.
4. I understand I am prohibited from bringing an *in forma pauperis* lawsuit if I have brought three or more civil actions or appeals (from a judgment in a civil action) in a court of the United States while incarcerated or detained in any facility, which lawsuits were dismissed on the ground they were frivolous, malicious, or failed to state a claim upon which relief may be granted, unless I am under imminent danger of serious physical injury.
5. I understand even if I am allowed to proceed without prepayment of costs, I am responsible for the entire filing fee and costs assessed by the court, which shall be deducted in accordance with the law from my inmate trust account by my custodian until the filing fee is paid.

Signed this 03 day of October, 20 16.  
(Day) (month) (year)



~~bobby perez~~ BOBBY PEREZ

(Signature of Plaintiff)

**WARNING: Plaintiff is advised any false or deliberately misleading information provided in response to the above questions may result in the imposition of sanctions. The sanctions the court may impose include, but are not limited to, monetary sanctions and the dismissal of this action with prejudice.**